

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

IN RE: QUINTUS CORPORATION, et al.	)	
	)	
	)	C.A. No. 06-769 (SLR)
AVAYA INC.	)	
	)	Bankruptcy Case Nos. 00-01-00501
Appellant,	)	through 001-00503 (MFW)
	)	
v.	)	Adv. 04-53074
	)	
KURT F. GWYNNE, Chapter 11 Trustee,	)	
	)	
Appellee.	)	

**DEFENDANT-APPELLANT'S RESPONSE TO JUNE 26, 2007 FILINGS OF TRUSTEE**

Defendant-Appellant Avaya Inc. (“Avaya”) respectfully submits this response to the Response of the Chapter 11 Trustee to Avaya Inc.’s Citation of Subsequent Authority (D.I. 17) and to the Reply of the Chapter 11 Trustee in further support of his motion to file a sur-reply with respect to Avaya’s appeal from an Order of the Bankruptcy Court (D.I. 18), both filed on June 26, 2007.

More than two weeks after Appellant Avaya filed its properly-scheduled reply brief, the Trustee filed an unauthorized sur-reply. (D.I. 14.) Avaya filed a response in opposition, pointing out that there were no new issues which supported the filing of sur-replies. Evidently insistent on getting in the final word, the Trustee then used that opposition as justification to make yet another filing. Moreover, rather than responding simply to Avaya's points, the Trustee has submitted another brief on the merits. (D.I. 18.)

Avaya further notes that in response to its short and proper citation of *In re Hechinger Inv. Co. of Delaware, Inc.*, \_\_\_ F.3d \_\_\_, 2007 WL 1630004 (3d Cir. June 7, 2007), as subsequent authority in accordance D.Del. LR 7.1.2(c) and with this Court's posted

instructions, the Trustee has filed yet another brief, of 4 pages, which advances a series of misleading statements and erroneous arguments to purportedly "distinguish" the Third Circuit's holding. (D.I. 17.)

Were Avaya to file a response to the latest additional unauthorized pleadings, doubtless the Trustee would file yet an additional reply – and all this on the nonsubstantive issue of whether a sur-reply should be permitted. Neither the Court nor judicial efficiency are promoted by this disorganized flurry of pleadings.

Still, as appellant, Avaya is entitled to the closing brief. Accordingly, to bring an end to this apparently endless briefing, Avaya will not further belabor the issue of whether the Trustee's unauthorized pleadings should be permitted to stand. If the Court does allow any of them to stand, however, Avaya respectfully requests that the Court designate which pleadings will remain, and give Avaya a final opportunity to respond. As to those remaining pleadings, if any, Avaya proposes to file a single short response which would address all such pleadings on the merits – which Avaya has yet had the opportunity to do.

Dated: July 10, 2007

ROSENTHAL, MONHAIT, & GODDESS, P.A.

By: 

Jeffrey S. Goddess (Del. Bar No. 630)  
919 N. Market Street  
Wilmington DE 19801  
(302) 656-4433  
jgoddess@rmgglaw.com

- and -

SIDLEY AUSTIN LLP  
James D. Arden  
787 Seventh Avenue  
New York, New York 10019  
(212) 839-5300  
Attorneys for Defendant Avaya Inc.

**CERTIFICATE OF SERVICE**

I, Jeffrey S. Goddess, hereby certify that on July 10, 2007, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF which will send notification of such filing to all registered participants. I further certify that I caused a copy of the foregoing document to be served upon the following persons in the manner indicated:

**First Class Mail**

(Official Committee of Unsecured Creditors)  
Christopher A. Ward, Esquire  
The Bayard Firm  
222 Delaware Avenue, Suite 900  
Wilmington, DE 19899-5130

**First Class Mail**

Richard Schepacarter, Esquire  
Office of the U.S. Trustee  
844 King Street, Room 2311  
Wilmington, DE 19801

**First Class Mail**

(Official Committee of Equity Security Holders)  
J. Mark Chevallier, Esquire  
McGuire, Craddock & Strother, P.C.  
Lincoln Plaza, Suite 3550  
500 North Akard  
Dallas, TX 75201

**First Class Mail**

Michael S. Etkin, Esquire  
Ira M. Levee, Esquire  
Lowenstein Sandler PC  
65 Livingston Avenue  
Roseland, NJ 07068

**First Class Mail**

(Official Committee of Equity Security Holders)  
Thomas E. Biron, Esquire  
Blank Rome LLP  
One Logan Square  
Philadelphia, PA 19103

**First Class Mail**

(Official Committee of Equity Security Holders)  
Bonnie Glantz Fatell, Esquire  
Blank Rome LLP  
1201 Market Street #800  
Wilmington, DE 19801-4226

**First Class Mail**

Kimberly E.C. Lawson, Esquire  
Reed Smith LLP  
1201 Market Street #1500  
Wilmington, DE 19801-1163

/s/ Jeffrey S. Goddess

Jeffrey S. Goddess (Del. Bar No. 630)  
Jessica Zeldin (Del. Bar No. 3558)  
jgoddess@rmgglaw.com  
jzeldin@rmgglaw.com  
(302) 656-4433